

IT 95-51

Tax Type: INCOME TAX

Issue: Withholding Tax - Failure To File Return/Make Payment

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

DEPARTMENT OF REVENUE)
STATE OF ILLINOIS)
)
v.) Docket:
)
XXXXXX) James P. Pieczonka
) Administrative Law Judge
Taxpayer(s))

RECOMMENDATION FOR DISPOSITION

APPEARANCES: James P. Pieczonka, Administrative Law Judge, reviewed the record without a hearing as requested by XXXXX (hereinafter referred to as "taxpayer").

SYNOPSIS: The instant case arose from a non-field IL-941 audit of taxpayer due to the failure of the business to file an IL-941 return and remit withheld taxes of its employees to the Department during the second quarter of 1986 pursuant to 35 ILCS 5/704 and 5/705. Also, penalties were imposed under 35 ILCS 5/1001, 5/1002(a) and 5/1005. It was determined that an Illinois 941 return was not filed for the quarter ended 6/30/86 and the business did not remit the taxes due to the Department. Therefore, a Notice of Deficiency was issued to taxpayer pursuant to Sections 704 and 705 of the Act in the amount of \$6,332.87.

The issues presented for review are:

1. Whether taxpayer failed to withhold, file an IL-941 return and pay over to the Department, Illinois withheld income taxes from compensation paid to its employees as required by Sections 701, 704 and 705 of the Act for the quarter ended 6/30/86?
2. Whether taxpayer failed to file an IL-941 tax return as required, and that such failure has not been shown to be due to reasonable cause

under Section 1001?

3. Whether taxpayer is liable for Section 1002(a) and 1005 penalties for the quarters in question?

4. Whether the statute of limitations has run for purposes of issuing a Notice of Deficiency to taxpayer for the quarter in question?

FINDINGS OF FACT:

1. The Department completed an IL-941 non-field audit of taxpayer, an Illinois corporation engaged in business as a detective agency. It was determined that taxpayer did not file an IL-941 return for the quarter in question or remit withheld taxes from compensation paid to its employees. (Dept. Ex. No. 1) Additionally, a Section 1001 penalty for failure to file an IL-941 return was proposed. Also, Section 1002(a) and 1005 penalties were proposed. (Dept. Ex. No. 1).

2. On May 29, 1991 a Notice of Deficiency was issued to taxpayer for the quarter in question in the total amount of \$6,332.87.

3. On June 19, 1991, taxpayer filed a timely Protest to the Notice of Deficiency and but did not request a hearing. The Protest contended that the period for issuance of the Notice of Deficiency had expired. (Dept. Ex. No. 2)

CONCLUSIONS OF LAW: A taxpayer's obligation for withholding taxes is governed by 35 ILCS 5/701 through 5/713. Employers that maintain an office or transact business in the State of Illinois may be liable for the withholding of Illinois income taxes if they pay compensation to residents of Illinois or to non-residents if all or part of the compensation is paid in Illinois as defined by 35 ILCS 304(a)(2)(B).

Once an employer meets those standards it is required to file withholding tax returns and remit withheld taxes to the Department of Revenue in accordance with 35 ILCS 5/704 and 5/705.

Additionally, Regulation Section 100.7300 provides that "... every

employer required to deduct and withhold tax on compensation paid in Illinois shall make a return for the first calendar quarter in which such tax is deducted and withheld for each subsequent calendar quarter (whether or not compensation is paid therein) until a final return is filed. Form IL-941, Employer's Quarterly Illinois Withholding Tax Return, is prescribed for making the return required under this paragraph...".

In the instant case taxpayer did not request a hearing but relied solely on the argument that the Notice of Deficiency is barred by the statute of limitations of Section 905(a)(1) and (2) of the Act. The subject Notice of Deficiency was issued to taxpayer on May 29, 1991. The Department determined that taxpayer did not file an IL-941 return for the quarter ended 6/30/86.

Accordingly, since taxpayer did not file an IL-941 return for the quarter ended 6/30/86, 35 ILCS 5/905(c) applies. Sections 905 (a)(1) and (2) do not apply to the quarter in question since the required IL-941 return was not filed. Under 5/905(c), the State is not on notice that any wages were paid and sums withheld and ought not to be foreclosed from asserting the claim against the employer or someone derivatively liable for such taxes.

Consequently, taxpayer did not file an IL-941 return for the quarter in question, therefore, a notice of deficiency may be issued at anytime. Taxpayer's defense that the Notice of Deficiency was barred by the statute of limitations of Section 905(a)(1) and (2) is misplaced.

Furthermore, the Notice of Deficiency issued in this case is prima facie correct so long as its proposed assessment meets some minimum standard of reasonableness, *Vitale v. The Illinois Department of Revenue*, 118 Ill. App. 3d 210, 454 N.E. 2d 799, 73 Ill. Dec. 702 (1983). In order to overcome the prima facie correctness, the Taxpayer has the burden of presenting competent evidence that the proposed adjustments are incorrect, *Masini v. Department of Revenue*, 60 Ill. App. 3d 11, 376 N.E. 2d 324 (1978).

In the instant case, taxpayer merely raised the statute of limitations as a defense and did not contest the correctness of the Notice of Deficiency for the quarter in question.

The Administrative Law Judge finds that taxpayer did not file an IL-941 return or remit withheld taxes for the quarter in question and failed to offer any evidence to rebut the Department's prima facie case. Consequently, the Notice of Deficiency must be upheld in its entirety.

RECOMMENDATION: The Administrative Law Judge recommends that the Director of Revenue uphold the deficiency in its entirety.

James P. Pieczonka
Administrative Law Judge

Date